[Case Title]Stellar Industries, Inc.
[Case Number]01-60850
[Bankruptcy Judge]Chief U.S. Bankruptcy Judge Steven W. Rhodes
[Adversary Number]02-4779
[Date Published]February 24, 2003

United States Bankruptcy Court
Eastern District of Michigan
Southern Division

In re:
Stellar Indus., Inc., Case No. 01-60850-R
Debtor. Chapter 7
_____/

Indicon Corp.,
Plaintiff,

v. Adv. No. 02-4779

Henry Mollicone, Michael Dunn, Kyle Spann, Peter Karcz, Utica Indus., Inc., DaimlerChrysler Corp., Interior P'ship Group, J&H Transp., Inc., Motor City Elec. Co., Allied Ventilation, Inc., Cold Saws, Inc., Henderson Elec., Inc., Michael Fabricating, Inc. and Cadre Corp.
Defendant.
_____/

Opinion Remanding Proceeding to State Court

This matter is before the Court on an order to show cause as to whether any of the claims in this adversary proceeding should be remanded. Responses have been filed by Indicon Corp., Utica Industries and the individual defendants, Henry Mollicone, Michael Dunn, Kyle Spann and Peter Karcz. The Court conducted a hearing on January 6, 2003, and took the matter under advisement. The Court now concludes that remand of the entire complaint is appropriate.

I.

In August 2001, Stellar entered into an agreement with Utica whereby Stellar transferred its assets, including accounts receivables, to Utica. Pursuant to the terms of the asset purchase agreement, funds were escrowed from the closing to cover claims against Utica for the debts of Stellar.

On October 29, 2001, an involuntary petition was filed against Stellar Industries, Inc. On April 26, 2002, Indicon Corp. filed suit in Macomb County Circuit Court against various individuals and corporations to recover amounts due and owing for services rendered in connection with a number of jobs as a subcontractor to Stellar.

In Count I of the amended complaint, filed November 26, 2002, Indicon alleges a violation of the Michigan Builders Trust Fund Act by Utica. In Count II, Indicon alleges that Utica has been unjustly enriched to the extent it has received funds belonging to Indicon. Count III alleges a violation of the MBTFA by Stefan Wanczyk, an employee of Utica. Count IV alleges conversion by Stefan Wanczyk. Count V alleges a violation of the MBTFA by defendants Mollicone, Spann, Karcz and Dunn, former officers of Stellar. Count VI alleges that Mollicone, Spann, Karcz and Dunn breached their duties to Stellar by dissipating corporate assets. Count VII alleges conversion against Mollicone, Spann, Karcz and Dunn. Count VIII seeks to foreclose on a construction lien on property owned by DaimlerChrysler. In Count IX, Indicon alleges that DaimlerChrysler has been unjustly enriched because Indicon provided Chrysler with $29,895 in labor, material and supplies and Chrysler has failed to pay.

On June 10, 2002, Utica removed the case to the bankruptcy court. Following the initial status conference on September 16, 2002, the Court issued an order to show cause as to whether and to what extent the matter should be remanded. The parties were instructed to file responses by November 1, 2002. The hearing was set for November 12, 2002. At the hearing, Indicon indicated its intention to amend the

complaint. The Court permitted Indicon two weeks to amend the complaint and adjourned the hearing to January 6, 2003.

II.

Indicon contends that the case should be remanded because the claims fall outside of the bankruptcy estate and will not have any effect on the administration of the case.

Utica, the individual defendants, and the trustee contend that the Court clearly has jurisdiction over the claims against Utica and Chrysler because the resolution of those claims will impact the amount of the escrowed funds remaining, against which the trustee asserts an interest. They further contend that because there are overlapping factual issues between those claims and the claims against the individual defendants, all the claims should remain before this Court.

III.

In order for the bankruptcy court to have jurisdiction over a proceeding, it must be at least "related to" a case under title 11. 28 U.S.C. § 157(c)(1). "A matter is related to a bankruptcy case if 'the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.'" *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc*., 973 F.2d 474, 482 (6th Cir. 1992) (citing *In re Wolverine Radio Co.*, 930 F.2d 1132, 1142 (6th Cir. 1991), (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984))). "Congress intended to grant to the district courts broad jurisdiction in bankruptcy cases." *Kelley v. Nodine* (*In re Salem Mortgage Co.*), 783 F.2d 626, 633 (6th Cir. 1986). "The matter need not directly involve the debtor, as long as it 'could alter the debtor's rights [or] liabilities,' but an 'extremely tenuous connection' will not suffice." *Sanders*, 973 F.2d at 482 (quoting *In re*

Wolverine Radio Co., 930 F.2d at 1142). Moreover, "the mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of section [1334(b)]." *Pacor*, 743 F.2d at 994. The bankruptcy court's jurisdiction may extend to suits between non-debtor parties only if the action has "an effect on the bankruptcy estate." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307, 115 S. Ct. 1493, 1498 n.5 (1995).

The Court concludes that the claims against Utica and DaimlerChrysler are within its jurisdiction. The outcome of these claims will affect the balance remaining in the escrow fund, over which the trustee asserts an interest on behalf of the estate. However, the Court does not have jurisdiction over the claims against the individual defendants, as the outcome of those claims will have no conceivable effect on the administration of the bankruptcy proceeding.

IV.

The defendants and the trustee contend that even if the Court does not have jurisdiction over the claims against the individual defendants, the entire complaint should remain before this Court because there are overlapping factual issues, it would promote judicial economy, and it would obviate the risk of inconsistent rulings.

Supplemental jurisdiction in the district courts is addressed in 28 U.S.C. § 1367(a), which provides:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or

> intervention of additional parties.

28 U.S.C. § 1367(a).

There is a split of authority on the issue of whether bankruptcy courts have supplemental jurisdiction under § 1367(a). The majority of the cases concludes that bankruptcy courts do not have supplemental jurisdiction. For example, in *Walker v. Cadle Co.* (*In re Walker*) 51 F.3d 562 (5th Cir. 1995), the court stated:

> Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and "the exercise of ancillary and pendant jurisdiction by bankruptcy courts could subsume the more restrictive 'relate to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous. Thus it would be somewhat incongruous to gut this careful system by allowing bankruptcy courts to exercise supplemental jurisdiction to pull into bankruptcy courts matters Congress excluded in its specific jurisdictional grants."

Id. at 573 (citations omitted). *See also Simmons v. Ford Motor Credit Co.* (*In re Simmons*), 224 B.R. 879 (N.D. Ill. 1998) ("While district courts may have authority to hear supplemental claims relating to bankruptcy cases, the bankruptcy court does not have that authority."); *Davis v. Victor Warren Prop., Inc.*(*In re Davis*), 216 B.R. 898 (Bankr. N.D. Ga. 1997); *Adams v. Prudential Sec. Inc.* (*In re Foundation for New Era Philanthropy*), 201 B.R. 382, 398-99 (Bankr. E.D. Pa. 1996) ("[T]he supplementary jurisdiction statute in favor of the district court does not, by its very terms, purport to alter the scope of bankruptcy jurisdiction under section 1334 or the power to refer matters found in section 157(a)."); *Boyajian v. DeLuca* (*Remington Dev. Group, Inc.*), 180 B.R. 365, 373 (Bankr. D.R.I. 1995) ("It would be anomalous to conclude that the bankruptcy court, which obtains jurisdiction by circumscribed

statutory reference from the district court, may exercise § 1367 supplemental jurisdiction at the outer limits of Article III."); *Wilcox v. Houghton* (*In re Houghton*), 164 B.R. 146 (Bankr. W.D. Wash. 1994) (Section 1367 cannot be used to expand the limited jurisdiction of bankruptcy courts without running afoul of the Constitution.).

A small minority of cases hold otherwise. *See In Jones v. Woody* (*In re W.J. Servs., Inc.*), 139 B.R. 824, 826 (Bankr. S.D. Tex. 1992) (Section 1367 supplemental jurisdiction applies to bankruptcy courts by virtue of 28 U.S.C. § 151, which designates bankruptcy courts as a unit of the district court.); *Goger v. Merchants Bank of Atlanta* (*In re Feifer Indus.*), 141 B.R. 450, 452 (Bankr. N.D. Ga. 1991) ("[T]here is nothing in § 1367 that suggests bankruptcy courts lack supplemental jurisdiction[.]"); *Hawkins v. Eads* (*In re Eads*), 135 B.R. 387, 390 (Bankr. E.D. Cal. 1991) ("[T]he supplemental jurisdiction statute applies in bankruptcy adversary proceedings and, subject to the court's discretion to decline to exercise such jurisdiction, permits defendants to assert third-party claims on theories of ancillary and pendent jurisdiction, which are components of supplemental jurisdiction.").

The Court concludes that the reasoning of the majority of the cases is persuasive and accordingly concludes that bankruptcy courts, as courts of limited jurisdiction, do not have supplemental jurisdiction. Accordingly, the claims against the individual defendants in this case are not within this Court's jurisdiction.

V.

The Court is therefore left with the option of either remanding only the claims against the individual defendants, or remanding the entire complaint.

28 U.S.C. §1452(b) allows the "court to which such claim or cause of action is removed [to] remand such claim or cause of action on any equitable ground." 28 U.S.C. § 1452(b). Factors to be taken into account in deciding whether remand is equitable include:

> 1) duplicative and uneconomical use of judicial resources in two forums; 2) prejudice to the involuntarily removed parties; 3) forum non conveniens; 4) the state court's ability to handle a suit involving questions of state law; 5) comity considerations; 6) lessened possibility of an inconsistent result; and 7) the expertise of the court in which the matter was originally pending.

Mann v. Waste Mgmt. of Ohio, Inc., 253 B.R. 211, 214-15 (N.D. Ohio 2000).

If a partial remand is ordered, two courts will have to address similar factual issues in two proceedings. Therefore, considerations of judicial economy and efficiencies for the litigants suggest a complete remand. That outcome will also eliminate the risk of inconsistent results. Finally, the Court notes that all of the claims are state law claims and that nothing in the record suggests that these claims cannot be timely adjudicated in the state court.

Accordingly, the Court will enter an order remanding this matter to the state court.

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Steven W. Rhodes
Chief U.S. Bankruptcy Judge

Entered: February 24, 2003

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For Publication